

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
JAMES MICHAEL STEELE**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD70387  
DATE: July 13, 2010

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Appeal From:

Buchanan County Circuit Court  
The Honorable Patrick K. Robb, Judge

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Appellate Judges:

Division Three: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

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Attorneys:

Shaun L. Mackelprang and John W. Grantham, Jefferson City, MO, for respondent.

Kent Denzel, Columbia, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**JAMES MICHAEL STEELE,**

**APPELLANT.**

No. WD70387

Buchanan County

Before Division Three Judges: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

James Steele and Victim were in a romantic relationship when an altercation occurred that resulted in Steele's conviction for first-degree domestic assault. Victim testified that, following an argument, Steele punched and kicked her before she was able to escape. Steele was arrested and claimed that it was the Victim who attacked him, and he denied causing her injuries.

Victim went to the emergency room with bruises on her face, right arm, back, a lip laceration, black eyes, and a concussion. Subsequent tests revealed she suffered from fractured vertebrae in her spine.

Dr. Willingham, Victim's emergency room physician, and Dr. Sollars, a subsequent treating physician, both testified, at trial, that Victim's back injuries were consistent with a kick.

In the closing argument, the prosecutor told the jury:

Well, ladies and gentlemen, which way does it go? Did he not do it at all, or did he not just - - just not cause her physical injury? He's arguing both ways here. I didn't do it, but there's no serious physical injury anyway. So it doesn't seem to matter if I did it or not. That's Mr. Steele. That's his attorney right now just said that to you.

Defense counsel objected "to the argument about counsel's performance. It's improper." The Court responded by saying "[o]kay. The objection is overruled. It's comment on your argument and I think it's fair. Proceed."

The jury returned with a verdict finding Steele guilty of first-degree domestic assault, and he was sentenced to twelve years imprisonment. Steele now appeals.

**AFFIRMED.**

**Division Three holds:**

In Point One, Steele argues that the trial court abused its discretion in overruling Steele's hearsay objection to statements made by Victim to her treating physician, Dr. Willingham. Dr. Willingham testified that Victim told him that her injuries were the result of being struck by her boyfriend. The statement regarding the identity of her attacker went beyond the exception to the rule against hearsay for statements made to a physician for diagnosis or treatment. Therefore, the evidence as to the identity of her attacker was error. However, reversal based on inadmissible evidence also requires that Steele show he was prejudiced by the improperly admitted evidence. Because Victim was a witness at trial, testified on the same matter as the improperly admitted evidence, and was subject to cross-examination by Steele, Steele was not prejudice by the admission. Further, Steele argues the statements constituted unfair bolstering. However, Steele must also show prejudice to warrant reversal on this ground as well, which Steele is unable to do. Therefore, we conclude that Steele has not shown he was prejudiced by the admission of improper hearsay evidence and reversal is not warranted. Point denied.

In Point Two, Steele argues the trial court abused its discretion in overruling his objection to what he characterizes as closing argument that disparaged defense counsel. Opposing counsel commented upon Steele's decision to argue both he was not the cause of Victim's injuries and the injuries were not as bad as she claimed. Personal attacks on opposing counsel are improper, but comments on opposing counsel's technique or trial tactics are permissible. Contrary to Steele's assertion, opposing counsel's closing argument was aimed at trial strategy and was not a personal attack on the integrity of counsel. Therefore, the comments were not improper.

Steele's second argument under Point Two was that the trial court erred in failing to maintain its role as an impartial arbiter, thereby denying Steele's rights to due process of law and a fair trial before an impartial judge. The Court responded to an objection by saying "[o]kay. The objection is overruled. It's comment on your argument and I think it's fair. Proceed." Because Steele did not object at trial, we review this point on appeal under plain error. The judge's comment that the argument was "fair" was in response to an objection that opposing counsel's argument was "improper." The basis of the judge's ruling was that the prosecution's argument was not improperly attacking defense counsel but was a comment on his argument and, therefore, was not improper or, in other words, fair. Steele cannot meet his burden that a clear miscarriage of justice has resulted. Point denied.

**Opinion by: Gary D. Witt, Judge**

July 13, 2010

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